

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

JOINT APPROPRIATIONS SUBCOMMITTEE ON LONG RANGE PLANNING

Call to Order: By **CHAIRMAN DAVE KASTEN**, on January 29, 2003 at 8:30 A.M., in Room 350 Capitol.

ROLL CALL

Members Present:

Rep. Dave Kasten, Chairman (R)
Sen. Tom Zook, Vice Chairman (R)
Rep. Christine Kaufmann (D)
Sen. Jon Tester (D)
Sen. Joseph (Joe) Tropila (D)
Rep. John Witt (R)

Members Excused: Sen. Bob Keenan (R)

Members Absent: None.

Staff Present: Catherine Duncan, Legislative Branch
Jane Hamman, OBPP
CJ Johnson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 10, CERCLA BONDS FOR LIBBY/TROY
Executive Action: None

CHAIRMAN KASTEN opened the Committee hearing on HB 10.

HEARING ON HB 10

Sponsor: **REP. RICK MAEDJE, HD 81**, said this bill is at the request of DEQ and OBPP to make available, funds that are required to match U.S. Environmental Protection Act (EPA) monies for the Libby Mine. He presented the history of the mine and its vermiculite deposits that have been used for insulation. Little was known about this deposit, called asbestos, and that it would be the cause of a deadly form of lung cancer 30 years down the road. He said it wasn't discovered until the late 1970s and early 1980s, that asbestos is a killer. In 1999, it was determined that 192 people have died from this asbestos related disease, and 375 have been diagnosed with it. In January of 2002, Governor Martz declared and designated Libby as the State's highest priority for cleanup. This declaration was called the "Silver Bullet," which places the Libby cleanup on the EPA Super Fund site. He said that when a declaration like this is announced, it is a one-time agreement with the federal government to provide their expertise in cleaning up the designated site, and they also pay 90 percent of the cost. He said the remainder, ten percent, is Montana's state share, which is what this bill will provide. He stated that it looked like Montana's share would be \$9 million, but EPA has recognized the State's budgetary difficulties, and have lowered that amount to \$4 or \$5 million. He said that the RIT (Resource Indemnity Trust) funds have also been lowered from \$700,000 to \$430,000. He urged the Committee to support and pass this bill.

Proponents:

REP. EILEEN J. CARNEY, HD 82, stated her support for the bill, and gave a summary of the situation in Libby. She informed the Committee that this type of asbestos causes a rare form of cancer that causes the lungs to shrink.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 8}

Tom Livers, DEQ, stated his support for the bill. He distributed a handout of his testimony, which he read. He walked the Committee through the bill, and explained what each section will accomplish. He discussed the repayment mechanism for the bonds that will finance the State's share of the cleanup. He said that the cleanup is being conducted under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or better known as the Superfund Act. He stated that the federal side of the cleanup will not be started until Montana can provide

assurance that it will meet its ten percent, or commitment share, which is this bill. He discussed an amendment that will be proposed in executive action that deals with concerns of the Department of Revenue. There is a provision in Section 1, that gives a deadline of April 1st, which is unrealistic because of regular taxes that are collected in March. He said that general language will replace this deadline. He urged the Committee to support and fund this project.

EXHIBIT(jlh19a01)

{Tape: 1; Side: A; Approx. Time Counter: 8 - 20}

Opponents: None

Informational Witnesses: John Wardell, Director of U.S. Environmental Protection Act (EPA) office, provided background information to the Committee. He also informed them that the responsible party for the cleanup at Libby has filed for bankruptcy.

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Questions from Committee Members and Responses:

CHAIRMAN KASTEN asked John Wardell about the recovery of the State's share in this project. **Mr. Wardell** said that the EPA has been forced to use Trust Fund monies for this project. He said that EPA is contesting Grace's bankruptcy filing, and he hoped they can recover these funds which will be used toward the cleanup.

REP. KAUFMANN asked Tom Livers about the State's share dropping from \$9 million to \$5 million, and wanted to know if the ten percent is still the State's total commitment for cleanup. **Mr. Livers** said that the State's share was not part of the negotiation. He said it is still ten percent. They are reviewing the State's full cost in a bond issuance this coming biennium that will be approximately \$8 million, and with the contingency of \$1 million. He said that the schedule for cleanup is aggressive, but they are looking at \$50 million that will be spent this coming biennium. **Mr. Livers** informed the Committee that the diversions proposed in HB 10 will divert \$430,000 per year, and HB 177 will divert \$1.8 million per year in oil and gas taxes which flows into two accounts: 1) Orphan Share; and 2) Reclamation Resources Development account (R&D), which is a 50/50 share. He said that the RC&D account from HB 177 will provide \$900,000 per year.

SEN. TESTER asked Tom Livers about HB 177, and if it passes out of House Appropriations Committee will the money be there for the matching CERCLA. **Mr. Livers** responded, "Yes, the account replaces the debt service, which is top priority for regular taxes. HB 177 diverts a separate input from oil and gas tax, and doesn't impact the flow of monies from the top of the priority list."

SEN. TESTER asked if the \$50 million was just for Libby, or if Troy is also included in this funding. **Mr. Livers** said the \$50 million is for Libby and Troy. He said this will not be the total cost of the project, and they will have to come back in the next biennium for a bond issuance of \$2 to \$3 million. **SEN. TESTER** asked if it is correct that the total cost of the cleanup will be approximately \$80 million when the project is completed. **Mr. Livers** replied that is correct.

SEN. TESTER asked if there is a fiscal note for this bill. **Sandy Olsen, DEQ**, distributed a copy of the fiscal note, and discussed its impact.

EXHIBIT(j1h19a02)

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SEN. TESTER and **John Livers** discussed the \$50 million, and the diversion of funds from other projects that would be eliminated so they could give this project top priority.

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{Tape: 1; Side: B}

The Committee asked questions about the groundwater assessment, and if it will be held harmless from this bill. **Mr. Livers** responded, stating that is correct, because it affects only the downstream accounts.

Jane Hamman said that "OBPP raised these same concerns when they were developing the budget. There is a \$10 million cap that exist in 75-10-625, and it has been there for a number of years. The State's relationship with the EPA is important, because it allows the State the ability to respond to these funds during the interim. The State made the commitment that the groundwater assessment program would be held harmless." **Ms. Hamman** said, "For the record, after negotiations with EPA, they (OBPP) would look at their first priority accounts, same as DNRC when they went on record stating they would look at their first priorities from their emergency account." She said that "OBPP wanted to be

on record that the \$5 million is the maximum for this biennium, and ensure that those programs are held harmless."

REP. WITT asked Tom Livers about tracking the material. **Mr. Livers** responded.

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CHAIRMAN KASTEN read a statement about asbestos. It said that "90 percent of the newest asbestos cases are brought about by people that have no physical impairment, but file suit to be assured of receiving benefits should the statute of limitations run out before they can provide evidence of the symptom." He said, "There is a lawsuit that is preventing the real victims that have been exposed to asbestos, and there are many widows and orphans, that are being deprived of any monetary compensation because of people that can afford better lawyers."

SEN. ZOOK asked Mr. Wordell how do they determine who receives these funds. **Mr. Wordell** said it is a carefully coordinated effort between EPA and DEQ.

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REP. WITT asked Mr. Wardell if EPA also deals with the health impact along with the cleanup. **Mr. Wardell** said that EPA is not responsible on health issues, only the cleanup.

SEN. ZOOK asked Ms. Hamman about the fiscal note, and the \$800,000 that will be freed up by eliminating the three mine projects, if that amount can be applied to this project. He also asked about the \$366,000 that is listed on the fiscal note. **Ms. Hamman** said that the \$366,000 is current law for the groundwater assessment program in Butte at the Bureau of Mines and Technology. The Committee discussed the RDGP grant, and the funds from the three mines that can be used and made available for this project.

{Tape: 1; Side: B; Approx. Time Counter: 17 - 29}

{Tape: 2; Side: A}

REP. KAUFMANN asked **REP. MAEDJE** when was this asbestos condition discovered in Libby. **REP. MAEDJE** said that it was back in the early 1960s, and a report was written about it in the mid 1950s.

Closing by Sponsor:

REP. MAEDJE closed, stating that the funds available between DEQ and EPA will provide the necessary monies to fund this project. He urged the Committee to support HB 10.

COMMITTEE BUSINESS

Jane Hamman discussed the projects under state agencies that are listed to be funded. She said the Bulk Plant issue was raised, and the status of the petroleum accounts that could help fund it. The CMC Roundhouse project was discussed and if the orphanature account could fund it.

{Tape: 2; Side: B; Approx. Time Counter: 5 - 7}

Jan Sensibaugh, Director of DEQ, discussed the projects that are statutorily funded. She said they have prioritized all of the abandoned mine sites for cleanup. She discussed the Equity Supply Coop, the Kimball Mine Project, and the MTS Tire Recyclers Cleanup.

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The Committee discussed the projects that are prioritized and need to be funded, and the projects that can be deleted in preparation for executive action tomorrow. **Jan Sensibaugh** answered questions, and walked the Committee through the projects that have been discussed for the last three days.

{Tape: 2; Side: A; Approx. Time Counter: 12 - 29}

{Tape: 2; Side: B}

Questions were asked about the projects in HB 7 and HB 10, and how they will fund them in executive action that will take place tomorrow morning, January 30.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 26}

CHAIRMAN KASTEN adjourned the Committee.

ADJOURNMENT

Adjournment: 10:45 A.M.

REP. DAVE KASTEN, Chairman

CJ JOHNSON, Secretary

DK/CJ

EXHIBIT (j1h19aad)